

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL DWAYNE BLAYLOCK,

Defendant-Appellant.

UNPUBLISHED

May 22, 2007

No. 269629

Wayne Circuit Court

LC No. 05-009290-01

Before: Cooper, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84, and was sentenced to a prison term of 38 to 120 months. He appeals as of right. We affirm.

Defendant argues that the evidence was insufficient to establish beyond a reasonable doubt that he was the perpetrator of the charged assault.

When reviewing the sufficiency of the evidence in a criminal case, this Court must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). The prosecution must prove the identity of the defendant as the perpetrator beyond a reasonable doubt. *People v Kern*, 6 Mich App 406, 409-410; 149 NW2d 216 (1967). The standard of review is deferential, and requires a reviewing court to draw all reasonable inferences and resolve credibility conflicts in support of the jury's verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

Here, the complainant was familiar with defendant before the incident. His identification of defendant as the perpetrator was sufficient evidence to support defendant's conviction. The credibility of the identification testimony was a question for the trier of fact to decide and this Court will not resolve it anew. *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988); *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000).

Defendant also challenges as hearsay the admission of a detective's testimony that he was given defendant's name by a witness who did not testify at trial. The following exchange occurred at trial:

Q. As a result of going to that apartment, talking with her, did you obtain anything from her?

A. Yes, I did.

Q. What was that?

A. First obtained a – possible name of the suspect in this case. She provided a name of --

[Defense Counsel]. Objection, Your Honor. He's going to say what she said.

THE COURT. Okay.

[The Prosecuting Attorney]. What else, judge?

THE COURT. This is not being offered for the truth of the matter asserted. You can say what name.

BY [the Prosecuting Attorney]:

Q. What name was it that you were given?

A. Michael Blaylock.

The trial court's decision to admit evidence is reviewed for an abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). However, where the admission of evidence involves a preliminary question of law, such as whether a rule of evidence or a statute bars admission, this Court reviews the question of law de novo. *Id.*

Here, the evidence was not hearsay to the extent that it was offered for an explanation of the actions of the police, rather than to prove the truth of the matter asserted. MRE 801(c). This testimony was inappropriate, but does not rise to the level of error; even if we did find error, we would further find it was harmless. Defendant's identification as the perpetrator of the assault was established by the complainant's testimony. The likelihood that the jury misused the testimony concerning the declarant's reference to defendant to establish defendant's guilt was minimal because the testimony did not indicate what the declarant said about him. Even assuming that the necessary inference of the testimony was an assertion that defendant was involved in the incident, in light of the complainant's familiarity with defendant before the

incident and the complainant's in-court and pretrial identifications of defendant, it is not more probable than not the challenged evidence was outcome determinative. *Lukity, supra*, p 496. Therefore, reversal is not warranted.

Affirmed.

/s/ Jessica R. Cooper
/s/ William B. Murphy
/s/ Janet T. Neff